171

No. (1)

Supreme Court, U.S.
FILED
10-403 SEP 21 2010
OFFICE OF THE CLERK

In The

Supreme Court of the United States

KATHLEEN R. WRIGHT, F/K/A
KATHLEEN R. SANGER,

Petitioner,

v.

JOY BROWN, PERSONAL REPRESENTATIVE
OF THE ESTATE OF EDWIN E. SANGER,
DECEASED,

Respondent.

On Petition For Writ Of Certiorari
To The Michigan Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

ROBERT B. JUNE
Counsel for Petitioner
LAW OFFICES OF ROBERT JUNE, P.C.
124 Pearl Street, Suite 201
Ypsilanti, MI 48197-5374
(734) 481-1000
bobjune@junelaw.com

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED FOR REVIEW

May a state court avoid ERISA preemption by fashioning a state contract law remedy that targets ERISA group life insurance benefits at the point immediately after they are first distributed by the ERISA plan fiduciary, or is such a supplemental state law remedy preempted under 29 U.S.C. § 1144(a) and this Court's decision in *Aetna Health Inc. v. Davila*, 542 U.S. 200, 124 S. Ct. 2488, 159 L. Ed. 2d 312 (2004)?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings below have included only petitioner, Kathleen R. Wright f/k/a Kathleen R. Sanger, and respondent, Joy Brown, personal representative of the Estate of Edwin E. Sanger, deceased.

TABLE OF CONTENTS

	Page
Question Presented for Review	i
Parties to the Proceedings	ii
Table of Contents	iii
Table of Appendices	v
Table of Authorities	vii
Opinions and Orders Below	1
Basis for Jurisdiction of this Court	1
Constitutional Provisions, Treaties, Statutes, Ordinances, and Regulations Involved in this Case	2
Statement of the Case	6
Reasons for Granting the Writ	14
I. The Court should grant the writ to determine whether a state court may avoid ERISA preemption by fashioning a state law remedy that targets ERISA group life insurance benefits at the point immediately after they are first distributed by the ERISA plan fiduciary, or whether such a supplemental state law remedy is preempted under 29 U.S.C. § 1144(a) and this Court's decision in *Aetna Health Inc. v. Davila*, 542 U.S. 200, 124 S. Ct. 2488, 159 L. Ed. 2d 312 (2004)	14
A. Ultimately, the *Davila* preemption analysis controls the outcome of this case	15

TABLE OF CONTENTS – Continued

Page

B. This case must be viewed first against the framework established in *Kennedy* 18

C. Using their interpretation of *Kennedy*, together with the holding of *Sweebe*, respondent and the lower courts have not disputed that petitioner is the proper ERISA beneficiary under the terms of the plan documents, but they have contended that the ERISA benefits are subject to a state contract law remedy after the benefits are initially distributed by the plan fiduciary 21

D. The alternative state law remedy in this case clearly "relates" to ERISA plan benefits and improperly supplements the ERISA civil enforcement scheme, and therefore, it is preempted under *Davila* 25

E. Finding the state law remedy preempted in this case would be consistent with the purposes of ERISA, and failure to resolve this important issue is likely to promote forum-shopping and inequity in ERISA benefit administration 27

Conclusion 30

TABLE OF CONTENTS – Continued

Page

Table of Appendices

Decision of the Michigan Court of Appeals, affirming the order of the Macomb County Circuit Court in favor of respondent, September 15, 2009 ..... App. 1

Opinion and Order of the Macomb County Circuit Court, granting summary disposition to respondent, March 12, 2008 ..... App. 5

Opinion and Order Denying of the Macomb County Circuit Court, Denying petitioner's motion for reconsideration of its order granting summary disposition to respondent, April 25, 2008 ..... App. 15

Opinion and Order of the United States District Court for the Eastern District of Michigan, remanding case to the Macomb County Circuit Court, September 19, 2007 ..... App. 20

Order of the Michigan Supreme Court denying petitioner's application for leave to appeal, June 23, 2010 ..... App. 28

Designation of Beneficiary Under the General Motors Life and Disability Benefits Program, October 21, 1990 ..... App. 30

Letter from Metropolitan Life Insurance Company to David Sanger, April 2, 2007 ..... App. 31

Complaint filed by respondent in the Macomb County Circuit Court, June 7, 2007 ..... App. 36

TABLE OF CONTENTS – Continued

Page

Assignment of right, title or interest as a contingent beneficiary in the proceeds of a life insurance policy on the life of Edwin E. Sanger, from assignor Debra Sanger-Evans to assignee Joy Brown, personal representative of the estate of Edwin E. Sanger, January 3, 2008 ..... App. 41

TABLE OF AUTHORITIES

Page

CASES

Aetna Health Inc. v. Davila, 542 U.S. 200, 124 S. Ct. 2488, 159 L. Ed. 2d 312 (2004).....*passim*

Boggs v. Boggs, 520 U.S. 833, 117 S. Ct. 1754, 138 L. Ed. 2d 45 (1997).....19, 20, 26, 28

Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown, 897 F.2d 275 (7th Cir. 1990).....28

Kennedy v. Plan Administrator for DuPont Savings & Investment Plan, ___ U.S. ___, 129 S. Ct. 865, 172 L. Ed. 2d 662 (2009).....*passim*

Massachusetts Mutual Life Ins Co v. Russell, 473 U.S. 134, 87 L. Ed. 2d 96, 105 S. Ct. 3085 (1985).....16, 17

McMillan v. Parrott, 913 F.2d 310 (6th Cir. 1990).....27, 28

Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 107 S. Ct. 1542, 95 L. Ed. 2d 55 (1987).....9

Pardee v. Pardee, 2005 OK CIV. APP. 27, PP20, 27, 112 P.3d 308 (2004).....20

Penny/Ohlmann/Nieman, Inc. (PONI) v. Miami Valley Pension Corp., 399 F.3d 692 (6th Cir. 2005).....26

Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 107 S. Ct. 1549, 95 L. Ed. 2d 39 (1987).....9, 17

Sweebe v. Sweebe, 474 Mich. 151 (2006).....*passim*

TABLE OF AUTHORITIES – Continued

Page

STATUTES

28 U.S.C. § 1257(a) 1

28 U.S.C. § 1331 ..... 1, 9, 23

29 U.S.C. § 1104(a)(1)(D) 2, 19

29 U.S.C. § 1132(a) 2, 16, 27

29 U.S.C. § 1144(a) ..... *passim*

29 U.S.C. § 1144(c)(1) 5, 25

29 U.S.C. §§ 1001-1461 6

RULES

M.C.R. 2.116(C)(10) 11

OPINIONS AND ORDERS BELOW

Respondent initiated this action by filing a complaint in the Macomb County Circuit Court on June 7, 2007. App. 36. Petitioner thereafter removed the case to the United States District Court for the Eastern District of Michigan pursuant to 28 U.S.C. § 1331, and the district court issued an Opinion and Order remanding the case to the Macomb County Circuit Court on September 19, 2007. App. 20. The Macomb County Circuit Court granted summary disposition to respondent in an Opinion and Order issued on March 12, 2008. App. 5. The Macomb County Circuit Court denied petitioner's motion for reconsideration in an Opinion and Order issued on April 25, 2008. App. 15. The Michigan Court of Appeals affirmed in an unpublished decision issued on September 15, 2009. App. 1. The Michigan Supreme Court issued an order denying petitioner's application for leave to appeal on June 23, 2010. App. 28.

BASIS FOR JURISDICTION OF THIS COURT

This Court may exercise jurisdiction to review the decision below pursuant to 28 U.S.C. § 1257(a). The decision to be reviewed was issued by the Michigan Court of Appeals on September 15, 2009. App. 1. The Michigan Supreme Court issued an order denying petitioner's timely application for leave to appeal on June 23, 2010. App. 28.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THIS CASE

29 U.S.C. § 1104(a)(1)(D)

(a) Prudent man standard of care.

(1) Subject to sections 403(c) and (d), 4042, and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –

* * *

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and title IV.

29 U.S.C. § 1132(a)

(a) Persons empowered to bring a civil action. A civil action may be brought –

(1) by a participant or beneficiary –

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 409;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 105(c);

(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this title, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this title;

(6) by the Secretary to collect any civil penalty under paragraph (2), (4), (5), (6), (7), (8), or (9) of subsection (c) or under subsection (i) or (l);

(7) by a State to enforce compliance with a qualified medical child support order (as defined in section 609(a)(2)(A));

(8) by the Secretary, or by an employer or other person referred to in section 101(f)(1), (A) to enjoin any act or practice which violates subsection (f) of section 101, or (B) to obtain appropriate equitable

relief (i) to redress such violation or (ii) to enforce such subsection;

(9) in the event that the purchase of an insurance contract or insurance annuity in connection with termination of an individual's status as a participant covered under a pension plan with respect to all or any portion of the participant's pension benefit under such plan constitutes a violation of part 4 of this title or the terms of the plan, by the Secretary, by any individual who was a participant or beneficiary at the time of the alleged violation, or by a fiduciary, to obtain appropriate relief, including the posting of security if necessary, to assure receipt by the participant or beneficiary of the amounts provided or to be provided by such insurance contract or annuity, plus reasonable prejudgment interest on such amounts; or

(10) in the case of a multiemployer plan that has been certified by the actuary to be in endangered or critical status under section 305, if the plan sponsor –

(A) has not adopted a funding improvement or rehabilitation plan under that section by the deadline established in such section, or

(B) fails to update or comply with the terms of the funding improvement or rehabilitation plan in accordance with the requirements of such section, by an employer that has an obligation to contribute with respect to the multiemployer plan or an

employee organization that represents active participants in the multiemployer plan, for an order compelling the plan sponsor to adopt a funding improvement or rehabilitation plan or to update or comply with the terms of the funding improvement or rehabilitation plan in accordance with the requirements of such section and the funding improvement or rehabilitation plan.

29 U.S.C. § 1144(a)

(a) Supersedure; effective date. Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

29 U.S.C. § 1144(c)(1)

(c) Definitions. For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

STATEMENT OF THE CASE

This action involves a dispute over group life insurance benefits paid under the terms of the General Motors Life and Disability Benefits Program, a welfare benefit program governed by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461. As is evident from the opinions issued below, the question of whether ERISA preempts the state law remedy relating to the group life insurance benefits has been the primary issue litigated throughout the case.

Edwin Sanger and petitioner Kathleen Wright, then known as Kathleen Sanger, were married on September 28, 1990. Mr. Sanger executed a Designation of Beneficiary form with regard to the General Motors Life and Disability Benefits Program on October 21, 1990. App. 30. The designation was made on a form supplied by MetLife and it related to "Basic Life Insurance" for hourly employees under Policy No. 15500. App. 30. Mr. Sanger revoked all previous designations and named petitioner, then known as Kathleen Sanger, as his primary beneficiary for 100% of the policy value. App. 30. Mr. Sanger named his daughter, Debra Sanger, as the contingent beneficiary. App. 30. Mr. Sanger reserved the right to change his designation at any time. App. 30.

The parties were divorced on December 21, 1992. Among other things, the judgment of divorce provided:

BENEFICIARY RIGHTS

> IT IS FURTHER ORDERED AND ADJUDGED that any of the rights of either party in any policy or contract of life, endowment or any insurance of the other as beneficiary or otherwise, is hereby extinguished unless specifically preserved by this Judgment.

Mr. Sanger did not remarry, and he died 14 years later on November 21, 2006. Although he had reserved the right to change his designation of beneficiary, he did not do so. Rather, Mr. Sanger continued the designation of petitioner as the primary beneficiary, and Debra Sanger as the contingent beneficiary, up to the time of his death.

After Mr. Sanger's death, MetLife notified petitioner that she was the last designated beneficiary entitled to the benefits. However, a competing claim for the life insurance benefits was submitted to MetLife by Mr. Sanger's son, David Sanger. MetLife denied David Sanger's claim on April 2, 2007. App. 31-35. MetLife explained that the life insurance policy was governed by ERISA, and that the relevant Summary Plan Description provided a specific procedure for changing beneficiaries: "You may change your beneficiary(ies) at any time using a designation form approved by the Corporation." App. 32. MetLife then explained that petitioner was the last beneficiary designated in accordance with the terms of the plan. App. 32. MetLife rejected the argument that the divorce judgment effectively waived petitioner's

rights to the benefits under the terms of the plan, explaining that the language in the divorce judgment "does not specifically refer to the designated beneficiary's rights under the employer's ERISA-regulated plan," and therefore, "there is no effective waiver." App. 32-33. MetLife concluded: "Consequently, the benefit at issue is payable pursuant to the beneficiary designation provisions of the Plan and ERISA, and therefore, we must deny your claim." App. 33. The MetLife letter then provided a detailed explanation of the "Collectively Bargained Appeal Process" that David Sanger could follow to appeal the decision administratively. App. 33-36. David Sanger did not appeal the MetLife decision, and there were no other competing claims. Consequently, the life insurance benefits were paid to petitioner.

On June 11, 2007, respondent Joy Brown, as personal representative of the Estate of Edwin Sanger, filed this action in Macomb County Circuit Court. App. 36. The complaint made two claims for relief. Count I stated a claim for "Declaratory Relief" to enforce the judgment of divorce. App. 37-39. The complaint recited the beneficiary rights provision of the judgment of divorce and then alleged: "While the language is not adequate to waive rights to an ERISA regulated plan, the language contained in the Judgment is enforceable against [petitioner]." App. 38-39. The complaint then requested the court to "declare that [petitioner] waived, pursuant to the Judgment of Divorce, any right to retain any insurance proceeds on the life of Edwin E. Sanger." App. 39.

Count II of the Complaint stated a claim for "Breach of Contract." App. 39-40. This count first recited the fact that the judgment of divorce was a contractual agreement. App. 39. Unlike the first claim, Count II then alleged that: "Pursuant to the Judgment of Divorce, [petitioner] waived any right to *receive* the proceeds from any policy or contract of life upon Edwin E. Sanger." App. 39 (emphasis added). Count II then asserted that the group life insurance proceeds "have been waived by [petitioner] and thus are due and payable to the Estate of Edwin E. Sanger." App. 39. Count II concluded with the assertion that: "Failure to turn over the proceeds from the life insurance contract is a breach of the Judgment of Divorce." App. 40.

Recognizing the complaint as essentially stating a claim for the benefits of an ERISA group life insurance program, petitioner removed the case to United States District Court for the Eastern District of Michigan in accordance with 28 U.S.C. § 1331, based on the authority of *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 107 S. Ct. 1549, 95 L. Ed. 2d 39 (1987), and *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 107 S. Ct. 1542, 95 L. Ed. 2d 55 (1987). Respondent thereafter filed a motion to remand the case to state court.

The district court issued an Opinion and Order remanding the case to state court on September 19, 2007. App. 20. Notwithstanding the express allegation in the complaint that petitioner "waived any right to *receive* the proceeds from any policy or contract of life upon Edwin E. Sanger," App. 39, the

district court found that respondent "concedes" that petitioner "is entitled to receive the proceeds" of the ERISA life insurance policy under the terms of the plan. App. 26. Rather, the court recharacterized the complaint as challenging only petitioner's "right to *keep* the proceeds of an ERISA plan." App. 26. As the district court framed the issue:

> I see a fundamental difference between state law causes of action that challenge a plan beneficiary's right to *receive* the proceeds of an ERISA plan and those that seek to challenge a plan beneficiary's right to *keep* the proceeds of an ERISA plan. Causes of action challenging a beneficiary's right to receive ERISA plan proceeds directly affect the administration of the ERISA plan. Because of this effect, these causes of action "relate to" the plan. Causes of action challenging a beneficiary's right to keep ERISA's plan proceeds do not interfere with the administration of the ERISA plan. They deal only with the rights of the plan beneficiary, and therefore, do not "relate to" the ERISA plan.

App. 26-27. On this basis, the district court held that respondent's "state law causes of action are not preempted by ERISA," and the case was remanded to the Macomb County Circuit Court. App. 27.

As the parties addressed the merits of the case in state court on respondent's motion for summary disposition, the standing of respondent to make a claim to the insurance proceeds was called into question. The designation of beneficiary form completed by

Mr. Sanger specifically named a contingent beneficiary, Debra Sanger. App. 30. Recognizing that the estate would get no interest and would have no standing to sue where there is a contingent beneficiary, *Kennedy v. Plan Administrator for DuPont Savings & Investment Plan*, ___ U.S. ___, 129 S. Ct. 865, 871, 172 L. Ed. 2d 662 (2009), petitioner obtained an assignment of interest from the contingent beneficiary, thereby stepping into her shoes. App. 41.

The trial court ultimately granted summary disposition to respondent pursuant to M.C.R. 2.116(C)(10) on March 12, 2008. App. 5. The trial court found that respondent had standing based on the assignment of interests from the contingent beneficiary. App. 11. Nevertheless, the trial court disagreed with petitioner's argument that this converted the case into a beneficiary contest, finding that petitioner "was the correct beneficiary of the MetLife insurance proceeds under ERISA." App. 12-13. However, relying on the Michigan Supreme Court's decision in *Sweebe v. Sweebe*, 474 Mich. 151, 160 (2006), the trial court concluded that "the courts of Michigan are not preempted from determining whether an individual who was the proper recipient of proceeds under ERISA nevertheless waived his or her rights to retain the proceeds under state law." App. 13. The trial court therefore determined that summary disposition in favor of respondent was warranted. App. 13. Petitioner then filed a motion for reconsideration, which the trial court denied on April 25, 2008. App. 15-19.

Petitioner filed a claim of appeal in the Michigan Court of Appeals on May 16, 2008, and the Court of Appeals issued its decision affirming the trial court on September 15, 2009. App. 1-4. The Court of Appeals found *Sweebe* to be controlling authority in the case:

> As in *Sweebe*, because Metropolitan Life properly distributed the insurance proceeds to [petitioner] as mandated by ERISA, and [respondent] does not challenge that distribution, this case does not involve ERISA preemption. . . . [Respondent]'s action seeks to enforce a divorce judgment. [Petitioner] and Sanger's divorce judgment explicitly extinguishes [petitioner]'s right to retain the insurance proceeds as the designated beneficiary under the Metropolitan Life policy. The divorce judgment is enforceable in contract, . . . and [petitioner]'s retention of the insurance proceeds, in contravention of the divorce judgment, constitutes a breach of that judgment. . . . Therefore, the trial court did not err in granting [respondent]'s motion for summary disposition and in ordering [petitioner] to turn over the life insurance proceeds to [respondent].

App. 3-4 (citations omitted). While the case was pending in the Michigan Court of Appeals, petitioner brought to the court's attention the decision issued by this Court in *Kennedy*. The Court of Appeals responded:

> We note that our decision does not conflict with the [United] States Supreme Court's recent decision in *Kennedy v. Plan Administrator for DuPont Savings & Investment Plan*, ___ U.S. ___, 129 S. Ct. 865, 172 L. Ed. 2d 662 (2009). In that case, the Supreme Court expressly declined to consider whether a decedent's estate might bring an action in state court to obtain benefits after they are properly distributed pursuant to ERISA. *Id.*, at ___, 129 S. Ct. at 875, n.10. Thus, our Supreme Court's decision in *Sweebe* controls on this issue.

App. 4. Petitioner timely filed an application for leave to appeal to the Michigan Supreme Court on October 27, 2009, and the Michigan Supreme Court denied petitioner's application for leave to appeal on June 23, 2010. App. 28. Petitioner therefore seeks relief in this Court.

REASONS FOR GRANTING THE WRIT

I. The Court should grant the writ to determine whether a state court may avoid ERISA preemption by fashioning a state law remedy that targets ERISA group life insurance benefits at the point immediately after they are first distributed by the ERISA plan fiduciary, or whether such a supplemental state law remedy is preempted under 29 U.S.C. § 1144(a) and this Court's decision in *Aetna Health Inc. v. Davila*, 542 U.S. 200, 124 S. Ct. 2488, 159 L. Ed. 2d 312 (2004).

The Court should grant the writ of certiorari in this case in order to determine whether a state court may avoid ERISA preemption by fashioning a state law remedy that targets ERISA group life insurance benefits at the point immediately after they are first distributed by the ERISA plan fiduciary, or whether such a supplemental state law remedy is preempted under 29 U.S.C. § 1144(a) and this Court's decision in *Aetna Health Inc. v. Davila*, 542 U.S. 200, 124 S. Ct. 2488, 159 L. Ed. 2d 312 (2004). If the Michigan decision is allowed to stand, then the selection of a state or federal forum for litigation of such benefit disputes may be outcome-determinative. This issue clearly was anticipated by the Court in *Kennedy, supra,* 129 S. Ct. at 875 n.10, and failure to resolve this important issue is likely to promote forum-shopping and inequity in ERISA benefit administration. In addressing this issue, it is important for the

Court to clarify what it meant when it held that "any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore preempted." *Davila, supra,* 542 U.S. at 209.

A. Ultimately, the *Davila* preemption analysis controls the outcome of this case.

The Michigan Court of Appeals formulated the ultimate decision in this case on the basis of state contract law:

> [Respondent]'s action seeks to enforce a divorce judgment. [Petitioner] and Sanger's divorce judgment explicitly extinguishes [petitioner]'s right to retain the insurance proceeds as the designated beneficiary under the Metropolitan Life policy. The divorce judgment is enforceable in contract, . . . and [petitioner]'s retention of the insurance proceeds, in contravention of the divorce judgment, constitutes a breach of that judgment. . . . Therefore, the trial court did not err in granting [respondent]'s motion for summary disposition and in ordering [petitioner] to turn over the life insurance proceeds to [respondent].

App. 3-4 (citations omitted). The Michigan Court of Appeals further concluded that "this case does not involve ERISA preemption" because the state

contract law remedy was not enforced until after the life insurance benefits were distributed to petitioner by the ERISA fiduciary, noting that in the *Kennedy* decision, "the Supreme Court expressly declined to consider whether a decedent's estate might bring an action in state court to obtain benefits after they are properly distributed pursuant to ERISA." App. 4, quoting *Kennedy*, *supra*, 129 S. Ct. at 875, n.10.

This Court has emphasized the expansive breadth of ERISA preemption on several occasions, however, and in *Davila* the Court explained that ERISA preemption extends to prohibit state law remedies that supplement the ERISA civil enforcement scheme. *Davila, supra*, at 208-09. In *Davila*, the plaintiffs had sued their health maintenance organizations for negligent handling of benefit coverage decisions in violation of Texas law, and the plaintiffs refused to amend their complaints to bring explicit ERISA claims. *Id.*, at 204-05. Concluding that ERISA's statutory remedies are exclusive, the Court determined that such supplemental remedies ordinarily enforceable under state law are preempted by ERISA:

> ERISA's "comprehensive legislative scheme" includes "an integrated system of procedures for enforcement." [*Massachusetts Mutual Life Ins Co v.*] *Russell*, 473 U.S. [134, at 147, 87 L. Ed. 2d 96, 105 S. Ct. 3085 [(1985)] (internal quotation marks omitted). This integrated enforcement mechanism, ERISA § 502(a), 29 U.S.C. § 1132(a), is a

distinctive feature of ERISA, and essential to accomplish Congress' purpose of creating a comprehensive statute for the regulation of employee benefit plans. As the Court said in *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 95 L. Ed. 2d 39, 107 S. Ct. 1549 (1987):

> "[T]he detailed provisions of § 502(a) set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans. The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA. 'The six carefully integrated civil enforcement provisions found in § 502(a) of the statute as finally enacted . . . provide strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly.'" *Id.*, at 54, 95 L. Ed. 2d 39, 107 S. Ct. 1549 (quoting *Russell*, *supra*, at 146, 87 L. Ed. 2d 96, 105 S. Ct. 3085).

Therefore, any state-law cause of action that duplicates, supplements, or supplants

> the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore preempted.

Davila, *supra*, at 208-09. Consequently, the controlling issue in this case is whether the Michigan contract remedy imposed after initial distribution of the ERISA plan benefits constitutes a supplemental remedy that is preempted by ERISA. It plainly does.

B. This case must be viewed first against the framework established in *Kennedy*.

At the outset, this case must be contrasted against the framework of the Court's recent decision in *Kennedy*. That decision made it clear that a waiver contained in a divorce decree may be considered in administering an ERISA benefit dispute, not as a matter of state law, but as applied under the federal common law of ERISA: "recognizing a waiver in a divorce decree would not be giving effect to state law; the argument is that the waiver should be treated as a creature of federal common law, in which case its setting in a state divorce decree would be only happenstance." *Kennedy, supra*, 129 S. Ct. at 874. In this sense, a federal court "would merely be applying federal law to a document that might also have independent significance under state law." *Id*.

As the *Kennedy* court further explained, however, the fact that a waiver contained in a divorce judgment was not precluded from consideration under the

law of ERISA did not control the decision of the case. *Id.* Rather, ERISA requires the plan fiduciary to act "in accordance with the documents and instruments governing the plan insofar as the documents and instruments are consistent with the provisions" of ERISA. 29 U.S.C. § 1104(a)(1)(D). Therefore, it is appropriate for the plan fiduciary to disregard a waiver when distributing benefits if it does not comport with the procedures established in the plan documents. *Kennedy, supra*, at 874-78.

Notably, however, the *Kennedy* decision expressly left open the question of whether a state law remedy may be applied after the ERISA benefits are distributed to the designated beneficiary by the plan fiduciary:

> 10 Despite our following answer to the question here, our conclusion that *§ 1056(d)(1)* does not make a nullity of a waiver leaves open any questions about a waiver's effect in circumstances in which it is consistent with plan documents. Nor do we express any view as to whether the Estate could have brought an action in state or federal court against Liv to obtain the benefits after they were distributed. Compare *Boggs v. Boggs*, 520 U.S. 833, 853, 117 S. Ct. 1754, 138 L. Ed. 2d 45 (1997) ("If state law is not preempted, the diversion of retirement benefits will occur regardless of whether the interest in the pension plan is enforced against the plan or the recipient of the pension benefit"), with *Sweebe v. Sweebe*, 474 Mich. 151,

> 156-159, 712 N.W.2d 708, 712-713 (2006) (distinguishing *Boggs* and holding that "while a plan administrator must pay benefits to the named beneficiary as required by ERISA," after the benefits are distributed "the consensual terms of a prior contractual agreement may prevent the named beneficiary from retaining those proceeds"); *Pardee v. Pardee*, 2005 OK CIV. APP. 27, PP20, 27, 112 P.3d 308, 313-314, 315-316 (2004) (distinguishing *Boggs* and holding that ERISA did not preempt enforcement of allocation of ERISA benefits in state-court divorce decree as "the pension plan funds were no longer entitled to ERISA protection once the plan funds were distributed").

Kennedy, supra, 129 S. Ct. at 875, n.10. It is this uncertainty regarding the availability of state remedies after initial distribution of ERISA benefits that respondent and the lower courts have relied upon in this case. The Michigan Supreme Court's decision in *Sweebe* is controlling in state court, of course, and the *Kennedy* footnote has been viewed by the courts below as virtually endorsing the enforcement of a state law remedy that "may prevent the named beneficiary from retaining those [ERISA benefit] proceeds." *Sweebe*, *supra*, at 159. This is inconsistent with the Court's holding in *Davila*, however, and it would be appropriate to correct this inconsistency at this time.

C. Using their interpretation of *Kennedy*, together with the holding of *Sweebe*, respondent and the lower courts have not disputed that petitioner is the proper ERISA beneficiary under the terms of the plan documents, but they have contended that the ERISA benefits are subject to a state contract law remedy after the benefits are initially distributed by the plan fiduciary.

Following this understanding of the *Kennedy* framework, there is no dispute that petitioner is the proper beneficiary of the group life insurance benefits under ERISA and the applicable plan documents in the first instance, but respondent and the lower courts nevertheless have claimed that this does not entitle petitioner to keep the ERISA benefits. When a competing claim for the benefits was submitted by David Sanger to MetLife, the claims administrator, MetLife adhered to the terms of the plan documents and determined that petitioner was entitled to the benefits. App. 31-35. Although given the opportunity to appeal MetLife's decision, David Sanger did not do so. Accordingly, the life insurance benefits were paid to petitioner.

Respondent's complaint filed in Macomb County Circuit Court did not contest MetLife's decision in this regard. App. 36-40. Rather, while acknowledging and accepting MetLife's determination that there was

no effective waiver under the terms of the plan documents, respondent asserted that Michigan law could be enforced to prevent petitioner from retaining the ERISA benefits once they were received by petitioner:

> 14. On April 2, 2007, Metropolitan Life Insurance Company declined to enforce the Michigan divorce decree dated December 21, 1992 wherein Kathleen Sanger waived her rights to the group life benefits because the divorce decree did not contain language indicating that the beneficiary was waiving rights under the employer's ERISA-Regulated plan.
>
> 15. While the language is not adequate to waive rights to an ERISA regulated plan, the language contained in the Judgment is enforceable against Defendant.
>
> 16. Pursuant to Michigan law, this Court may declare that Defendant has no right to retain insurance proceeds received from Metropolitan Life Insurance Company on behalf of its insured, Edwin Sanger.

App. 38-39. Respondent further asserted as a matter of contract law that the divorce judgment constituted a waiver of petitioner's right to *retain* the life insurance benefits once they were received, "and

thus are due and payable to the Estate of Edwin E. Sanger."[1] App. 39-40. Consequently, respondent claimed entitlement to a state contract law remedy in relation to the ERISA life insurance benefits:

> 21. Failure to turn over the proceeds from the life insurance contract is a breach of the Judgment of Divorce.

App. 40. When petitioner removed the case to the United States District Court for the Eastern District of Michigan, the federal district court remanded the case to state court, despite recognizing that there was no dispute over petitioner's right to receive the life insurance benefits in accordance with the plan terms. App. 26-27. Like respondent, the district court viewed the state law remedy as applying to the benefits after they were distributed by the plan fiduciary:

> I see a fundamental difference between state law causes of action that challenge a plan beneficiary's right to *receive* the proceeds of an ERISA plan and those that seek to challenge a plan beneficiary's right to *keep* the proceeds of an ERISA plan. Causes of action challenging a beneficiary's right to receive

---

[1] Later recognizing that the designation of beneficiary form filed by Mr. Sanger included a contingent beneficiary, respondent obtained an assignment of rights from the contingent beneficiary. App. 41.

> ERISA plan proceeds directly affect the administration of the ERISA plan. Because of this effect, these causes of action "relate to" the plan. Causes of action challenging a beneficiary's right to keep ERISA's plan proceeds do not interfere with the administration of the ERISA plan. They deal only with the rights of the plan beneficiary, and therefore, do not "relate to" the ERISA plan.

App. 26-27. After remand, the Macomb County Circuit Court followed this same logic: "the courts of Michigan are not preempted from determining whether an individual who was the proper recipient of proceeds under ERISA nevertheless waived his or her rights to retain the proceeds under state law." App. 13. Finally, the Michigan Court of Appeals agreed that MetLife "properly distributed the insurance proceeds to [petitioner] as mandated by ERISA," again viewing the state law remedy as only preventing petitioner from *retaining* the ERISA benefits after she received them. App. 3-4.

Thus, petitioner clearly is the rightful beneficiary under ERISA and the terms of the plan documents. The question that remains is whether a state contract law remedy that targets ERISA group life insurance benefits at the point immediately after they are first distributed by the ERISA plan fiduciary is subject to preemption under 29 U.S.C. § 1144(a) and the holding of *Davila*.

D. The alternative state law remedy in this case clearly "relates" to ERISA plan benefits and improperly supplements the ERISA civil enforcement scheme, and therefore, it is preempted under *Davila*.

ERISA clearly preempts any state law that may "relate to any employee benefit plan" covered by the statute. 29 U.S.C. § 1144(a). The range of state laws that are preempted includes "all laws, decisions, rules, regulations, or other State action having the effect of law." 29 U.S.C. § 1144(c)(1). Moreover, as explained in *Davila*, any state law remedy that supplements ERISA's exclusive civil enforcement scheme is preempted. *Davila*, *supra*, at 209. The state law at issue in this case clearly relates to an ERISA plan, expressly targeting ERISA plan benefits with an alternative state law remedy, and therefore, it should be deemed preempted.

The relationship of this state law remedy to the ERISA plan benefits is not merely incidental or tenuous. Rather, but for the existence of the ERISA plan benefits, respondent would have no claim at all. Respondent's complaint specifically targets the proceeds of the "ERISA-Regulated plan." App. 38. The complaint asserts that petitioner's "[f]ailure to turn over the proceeds from the [ERISA] life insurance contract" is a breach of contract under state law. App. 40. The state trial court clearly understood that the state law remedy was being applied to ERISA plan benefits, taking the position that "the courts of

Michigan are not preempted from determining whether an individual who was the proper recipient of proceeds under ERISA nevertheless waived his or her rights to retain the proceeds under state law." App. 13. Likewise, the Michigan Court of Appeals recognized that the funds at issue were insurance proceeds distributed to petitioner "as mandated by ERISA," but nevertheless determined that state contract law controlled the ultimate disposition of those ERISA benefits. App. 3-4.

It is true that the amorphous nature of the phrase "relate to" has sometimes caused some difficulty in determining which "state laws" are preempted under ERISA. *See Penny/Ohlmann/Nieman, Inc. (PONI) v. Miami Valley Pension Corp.*, 399 F.3d 692, 697 (6th Cir. 2005). However, this case does not present a close call when focusing on the nature and target of the remedy sought by respondent. "A suit against a non-fiduciary to recover plan benefits seeks to create an alternative to ERISA's enforcement mechanism, and accordingly is preempted under [29 U.S.C. § 1144(a)]." *Id.*, at 702. This Court has specifically recognized that it makes no difference whether competing claimants seek to enforce their rights "only after the retirement benefits have been distributed since their asserted rights are based on the theory that they had an interest in the undistributed [ERISA] plan benefits." *Boggs v. Boggs*, 520 U.S. 833, 854, 117 S. Ct. 1754, 138 L. Ed. 2d 45 (1997). The state law claims are still preempted. *Id.*

As explained in *Davila*, "Congress' intent to make the ERISA civil enforcement mechanism exclusive would be undermined if state causes of action that supplement the ERISA § 502(a) remedies were permitted, even if the elements of the state cause of action did not precisely duplicate the elements of an ERISA claim." *Davila*, *supra*, at 216.

The state law remedy in this case specifically targets the proceeds of an ERISA plan with the acknowledgement that petitioner is entitled to receive those benefits under the terms of the plan and the law of ERISA. Therefore, the state law remedy in this case is preempted under 29 U.S.C. § 1144(a) and the holding of this Court in *Davila* prohibiting remedies that supplement the civil enforcement scheme of 29 U.S.C. § 1132(a). *Davila*, *supra*, at 208-09.

E. Finding the state law remedy preempted in this case would be consistent with the purposes of ERISA, and failure to resolve this important issue is likely to promote forum-shopping and inequity in ERISA benefit administration.

"A participant is master of his own ERISA plan." *McMillan v. Parrott*, 913 F.2d 310, 312 (6th Cir. 1990). In this case, Mr. Sanger continued the designation of petitioner as his beneficiary for 14 years after his divorce until he died. App. 1-2. Mr. Sanger could have changed his beneficiary designation at any time. App. 30. "Under [ERISA] plans, we determine intent by the designation on file at the time of his death."

McMillan, *supra*, at 312. As this Court reiterated in *Kennedy*:

> The point is that by giving a plan participant a clear set of instructions for making his own instructions clear, ERISA forecloses any justification for enquiries into nice expressions of intent, in favor of the virtues of adhering to an uncomplicated rule: "simple administration, avoid[ing] double liability, and ensur[ing] that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules."

Kennedy, *supra*, 129 S. Ct. at 875-76, quoting *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 283 (7th Cir. 1990) (Easterbrook, J., dissenting). These basic principles would be destroyed if respondent's state law remedy were to survive ERISA preemption in this case. The determination of benefit eligibility by the plan fiduciary would become a ministerial formality, while the ultimate benefit outcome would be determined afterward under state law. All of the certainty that ERISA provides would be lost, and it would be impossible to ensure "that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules." *Id.*

Failure to address this issue also may promote forum-shopping. As the law stands in federal court under the precedents of *Kennedy*, *Davila*, and *Boggs*, a beneficiary determination made in accordance with ERISA plan documents is not subject to revision

under state laws. Under *Sweebe*, however, once a designated beneficiary has received the ERISA benefits, state contract law may be enforced to divest the beneficiary of those benefits. App. 3, citing *Sweebe, supra*, at 156. Consequently, deciding whether to file a declaratory action in state or federal court may become outcome-determinative with respect to ERISA benefit claims.

Finally, it should be recognized that this exception to ERISA preemption is not limited in its applicability to cases involving purported waivers contained in divorce judgments. Any benefit determination made by an ERISA fiduciary could be subject to redetermination under state law once benefits are distributed. This will entice clever pleading rather than adherence to the principles of ERISA, and this case is no exception. There is nothing in the divorce judgment "waiver" that suggests the right to *receive* ERISA benefits is maintained while the right to *retain* those benefits is extinguished, but this is the central holding of the Court of Appeals in this case. App. 4. Following *Sweebe*, *supra*, at 159, the Court of Appeals held: "We conclude that the benefits were properly paid to plaintiff under ERISA, but plaintiff has no legal right to retain the proceeds under the waiver provision in the judgment of divorce." The better answer is that the divorce judgment either constitutes a complete waiver of benefits or it does not constitute any waiver at all, but this determination should be made in accordance with the ERISA plan documents under the federal common law of

ERISA, and not under state law. *Kennedy*, *supra*, 129 S. Ct. at 874.

The difference in how federal and state courts handle this ERISA preemption issue is quite substantial, and it will not change without the intervention of this Court. Therefore, the Court should grant the writ of certiorari requested by petitioner in order to address this issue decisively.

CONCLUSION

For the reasons stated above, petitioner requests this Honorable Court to grant the petition for a writ of certiorari to review the decision issued by the Michigan Court of Appeals in this action.

Respectfully submitted,

ROBERT B. JUNE
Counsel for Petitioner
LAW OFFICES OF ROBERT JUNE, P.C.
124 Pearl Street, Suite 201
Ypsilanti, MI 48197-5374
(734) 481-1000

Dated: September 21, 2010

STATE OF MICHIGAN

COURT OF APPEALS

JOY BROWN, Personal Representative of the Estate of EDWIN E. SANGER, Deceased,

Plaintiff-Appellee,

v.

KATHLEEN R. WRIGHT, f/k/a KATHLEEN R. SANGER,

Defendant-Appellant.

UNPUBLISHED
September 15, 2009

No. 285509
Macomb Circuit Court
LC No. 2007-002448-CK

Before: O'Connell, P.J., and Talbot and Stephens, JJ.

PER CURIAM.

Defendant Kathleen R. Wright appeals as of right from a circuit court order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10) and ordering defendant to turn over life insurance proceeds in the amount of $26,849 to plaintiff in her capacity as the personal representative of Edwin Sanger's estate. We affirm.

Defendant married Edwin Sanger in September 1990. In October 1990, Sanger named defendant as beneficiary under an employer-provided life insurance policy with Metropolitan Life Insurance

Company (Metropolitan Life). Defendant and Sanger divorced in 1992. The judgment of divorce contained a provision providing that "any of the rights of either party in any policy or contract of life, endowment or any insurance of the other as beneficiary or otherwise, is hereby extinguished unless specifically preserved by this Judgment." Sanger never changed the beneficiary designation in the Metropolitan Life policy. Sanger died in November 2006, and Metropolitan Life thereafter paid the insurance policy benefits to defendant, in accordance with the beneficiary designation. Plaintiff, as the personal representative of Sanger's estate, subsequently filed this action against defendant, requesting a declaratory judgment that defendant had no right to retain the insurance proceeds and that defendant's retention of the proceeds was a breach of the divorce judgment. The trial court rejected defendant's argument that plaintiff's action was governed by the Employee Retirement Income Security Act (ERISA), 29 USC 1001 *et seq.*, granted plaintiff's motion for summary disposition, and ordered defendant to turn over the insurance proceeds to plaintiff. Defendant now appeals.

We review de novo a trial court's decision on a motion for summary disposition. *Trost v Buckstop Lure Co, Inc,* 249 Mich App 580, 583; 644 NW2d 54 (2002). The trial court granted plaintiff's motion pursuant to MCR 2.116(C)(10), which tests the factual support for a claim. *Lewis v LeGrow,* 258 Mich App

175, 192; 670 NW2d 675 (2003). The court "'must consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law.'" *Michigan Ed Employees Mut Ins Co v Turow,* 242 Mich App 112, 114-115; 617 NW2d 725 (2000), quoting *Unisys Corp v Comm'r of Ins,* 236 Mich App 686, 689; 601 NW2d 155 (1999).

We agree with plaintiff that this case is controlled by *Sweebe v Sweebe,* 474 Mich 151; 712 NW2d 708 (2006). As in *Sweebe,* because Metropolitan Life properly distributed the insurance proceeds to defendant as mandated by ERISA, and plaintiff does not challenge that distribution, this case does not involve ERISA preemption. See *id.* at 155. Plaintiff's action seeks to enforce a divorce judgment. Defendant and Sanger's divorce judgment explicitly extinguishes defendant's right to retain the insurance proceeds as the designated beneficiary under the Metropolitan Life policy. The divorce judgment is enforceable in contract, see *In re Lobaina Estate,* 267 Mich App 415, 417-418; 705 NW2d 34 (2005), and defendant's retention of the insurance proceeds, in contravention of the divorce judgment, constitutes a breach of that judgment. *Sweebe, supra* at 156; see also *Moore v Moore,* 266 Mich App 96, 98; 700 NW2d 414 (2005). Therefore, the trial court did not err in granting plaintiff's

motion for summary disposition and in ordering defendant to turn over the life insurance proceeds to plaintiff.[1]

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael J. Talbot
/s/ Cynthia Diane Stephens

---

[1] We note that our decision does not conflict with the [United] States Supreme Court's recent decision in *Kennedy v Plan Administrator for DuPont Savings & Investment Plan*, ___ US ___; 129 S Ct 865; 172 L Ed 2d 662 (2009). In that case, the Supreme Court expressly declined to consider whether a decedent's estate might bring an action in state court to obtain benefits after they are properly distributed pursuant to ERISA. *Id.* at ___; 129 S Ct at 875 n 10. Thus, our Supreme Court's decision in *Sweebe* controls on this issue.

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

JOY BROWN, Personal Representative of the ESTATE OF EDWIN E. SANGER, deceased,

Plaintiff,

v.

Case No. 2007-2448-CK

KATHLEEN R. WRIGHT, f/k/a KATHLEEN R. SANGER,

Defendant. /

OPINION AND ORDER

Plaintiff Joy Brown has filed a motion for summary disposition.

Plaintiff filed this complaint on June 11, 2007. Plaintiff alleges that decedent Edwin Eugene Sanger married defendant on September 28, 1990. Plaintiff alleges that decedent designated defendant as the beneficiary "of his ERISA regulated General Motors Life and Disability Benefits Program" on October 21, 1990. Plaintiff alleges that decedent and defendant entered into a judgment of divorce on December 21, 1992. Plaintiff contends that the judgment of divorce provided, inter alia, that any beneficiary rights under any life insurance policy were extinguished unless specifically preserved in the judgment. It likewise provided that any rights to any pension, annuity or

retirement plans would be extinguished unless specifically preserved.

Plaintiff alleges that decedent died on November 21, 2006. Plaintiff alleges that Metropolitan Life Insurance Company ("MetLife") declined to enforce the divorce decree because the divorce decree did not contain language indicating that the beneficiary was waiving rights under the employer's ERISA-regulated plan. Nevertheless, plaintiff alleges that this Court has the power to declare that defendant has no right to retain the insurance proceeds from MetLife. Plaintiff thus brings one count for declaratory judgment. Next, plaintiff contends that defendant waived her right to receive any proceeds from MetLife. Plaintiff argues that failure to turn over the proceeds from the life insurance policy constitutes a breach of the judgment of divorce. Plaintiff thus brings count two for breach of contract.

Defendant removed this case to federal court. Following removal, however, plaintiff filed a motion to remand. The Hon. John Feikens, Judge of the United States District Court for the Eastern District of Michigan, found that there is a fundamental difference between "state law causes of action that challenge a plan beneficiary's right to *receive* the proceeds of an ERISA plan and those that seek to challenge a plan beneficiary's right to *keep* the proceeds of an ERISA plan." Judge Feikens found that the latter causes of action do not "relate to" [an] ERISA plan, and he therefore remanded this matter.

Plaintiff brings the instant motion under MCR 2.116(C)(8) and (C)(10). Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim on which relief can be granted. *Carter v Ann Arbor City Attorney,* 271 Mich App 425, 426-427; 722 NW2d 243 (2006) (citation omitted). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Cork v Applebee's Inc,* 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for the plaintiff's claim. *Hiner v Mojica*, 271 Mich App 604, 607; 722 NW2d 914 (2006) (citation omitted). In evaluating a motion brought under this subrule, the Court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* When the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

In support of her motion for summary disposition, plaintiff Brown argues that decedent Sanger divorced defendant Wright in 1992. Nevertheless, plaintiff contends that decedent never changed the beneficiary designation on the MetLife life insurance

policy payable to defendant. Plaintiff avers that, when decedent's children attempted to collect the proceeds of the policy, they were unable to do so. Plaintiff argues that the judgment of divorce constituted a waiver by defendant to any right to retain proceeds from decedent's life insurance policy. Relying primarily on *Sweebe v Sweebe,* 474 Mich 151, 712 NW2d 708 (2006), plaintiff acknowledges that she has no right to challenge MetLife's disbursement of the life insurance proceeds, but contends that she does have the right to challenge defendant's retention of these benefits. Plaintiff contends that the judgment of divorce pertaining to decedent and defendant constitutes an unambiguous contract, and is properly interpreted as a matter of law.

In response, defendant argues that plaintiff has not asserted any standing as a 'beneficiary of the MetLife life insurance policy at issue. As such, defendant contends that plaintiff is attempting to vindicate the rights of third parties to the life insurance policy and is precluded from doing so by her lack of standing. Defendant distinguishes *Sweebe* by noting that the insurance policy in the case at bar contains named secondary beneficiaries. Further, defendant claims that the plaintiff in *Sweebe* was suing to collect life insurance proceeds despite her waiver, whereas she has already collected the proceeds of the MetLife life insurance policy. Finally, defendant notes that the divorce judgment in *Sweebe* extinguished future rights in life insurance policies, whereas decedent continued to name defendant as

beneficiary long after their divorce. Defendant next claims that plaintiff's count for breach of contract is untenable. Finally, defendant contends that any beneficiary contest in this case is properly governed by ERISA. For all of these reasons, defendant requests summary disposition pursuant to MCR 2.116(I)(2).

Plaintiff has filed a reply to defendant's response, arguing that the instant cause of action is not a beneficiary contest under ERISA. Plaintiff acknowledges that MetLife properly disbursed the life insurance proceeds to defendant as the named beneficiary. However, plaintiff argues that defendant waived her right to keep these proceeds pursuant to the judgment of divorce. Plaintiff argues that she is entitled – as representative of decedent's estate – to bring the instant action to enforce the contractual judgment of divorce. Alternatively, plaintiff notes that decedent's daughter Deborah Sanger has assigned any right, title, or interest to the insurance proceeds to plaintiff in her capacity as personal representative of decedent's estate. Plaintiff next claims that the fact that the life insurance policy at issue did not contain the word "future" does not preclude the Court from finding that a valid waiver of future rights under the life insurance policy occurred. Finally, plaintiff argues that it was not necessary for decedent to evidence any intent to change the designation of his life insurance policy apart from entering into the judgment of divorce.

In *Sweebe,* decedent's surviving spouse, "[a]cting on behalf of the estate, . . . filed a motion to enforce the waiver in the judgment of divorce." *Slveebe,* supra at 153. The Supreme Court held that "while a plan administrator is required by ERISA to distribute the proceeds from a plan to a named beneficiary, the named beneficiary can then be found to have waived the right to retain the distributed proceeds." *Id.* at 160; and see *MacInnes v MacInnes,* 260 Mich App 280, 677 NW2d 889 (2004) and *Moore v Moore*, 266 Mich App 96, 700 NW2d 414 (2005).

It is well established "that 'waiver is the intentional relinquishment of a known right.'" *Sweebe, supra* at 156-157 (citations omitted). "[T]he question of what constitutes a waiver is a question of law." *MacInnes, supra* at 283 (citation omitted). "A settlement agreement, such as a stipulation and property settlement in a divorce, is construed as a contract." *Id.* "Interpretation of unambiguous and unequivocal contract language is [also] a question of law." *Id.* "There is no magic language that must be included to effectively waive a person's interest in plan proceeds. Rather, courts that have examined what constitutes a waiver have consistently stated that a waiver must simply be explicit, voluntary, and made in good faith." *Sweebe,* supra at 157 (citations omitted).

As a preliminary matter, the Court is satisfied that, in accordance with *Sweebe, Moore,* and *MacInnes,* decedent Sanger's estate – through personal representative Joy Brown – has standing to enforce the waiver contained in the judgment of

divorce. The Court disagrees with defendant's contention that *Sweebe* is distinguishable insofar as the policy at issue in *Sweebe* apparently did not name a contingent beneficiary. Debra Sanger-Evans, decedent's daughter and the contingent beneficiary under decedent's life insurance policy, has executed an assignment of "any and all interest as a contingent beneficiary in the proceeds" of the life insurance policy to Joy Brown in her capacity as personal representative of decedent's estate. Thus, the Court is satisfied that plaintiff has standing to bring this cause of action.

The Court is likewise satisfied that there is no genuine issue of material fact precluding summary disposition of this matter. In the case at bar, the judgment of divorce between decedent and defendant provided that "any of the rights of either party in any policy or contract of life, endowment or any insurance of the other as beneficiary or otherwise, is hereby extinguished unless specifically preserved by this Judgment." The judgment further provided that "any rights of either party in any pension, annuity, or retirement plan benefit of the other, whether vested of unvested, accumulated or contingent are extinguished unless provided for elsewhere in this Judgment." Defendant correctly observes that the judgment does not refer to *future* rights. However, Michigan courts have found language essentially similar to that in the case at bar to constitute a waiver to any rights as a beneficiary under an insurance policy as a matter of law, despite lacking any

reference to future rights per se.[1] As in *Sweebe, Moore,* and *MacInnes,* the Court is satisfied that the judgment of divorce in the present case is unambiguous and constitutes a waiver of defendant's interest in the MetLife insurance policy.

Lastly, the Court disagrees with defendant's contention that this litigation is a beneficiary contest governed by ERISA. Plaintiff acknowledges that defendant was the correct beneficiary of the MetLife

---

[1] In [*MacInnes*], the judgment of divorce provided in pertinent part:

> It is further ordered and adjudged, that except as otherwise provided, all rights of either party in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the other in which said party was named or designated as beneficiary, or to which said party became entitled by assignment or change of beneficiary during the marriage or in anticipation thereof, whether such contract or policy was heretofore or shall hereafter be written or become effective, shall hereupon become and be payable to the estate of the owner of said policy, or such named beneficiary as shall hereafter be affirmatively designated.

[*MacInnes*], *supra* at 287-288.

In *Moore,* the judgment of divorce provided *in* pertinent part:

> IT IS FURTHER ORDERED AND ADJUDGED that *any* right of either party in *any* policy or contract of life, endowment or annuity insurance of the other, as beneficiary are hereby *extinguished* unless specifically preserved by this Judgment.

Moore, supra at 98-99.

insurance proceeds under ERISA. Plaintiff simply contends that defendant waived her right to these proceeds in the judgment of divorce. As noted above, the *Sweebe* Court has clearly and unequivocally held that the courts of Michigan are not preempted from determining whether an individual who was the proper recipient of proceeds under ERISA nevertheless waived his or her right to retain the proceeds under state law. See *Sweebe, supra* at 160. As such, summary disposition in plaintiff's favor is warranted.

For the reasons set forth above, plaintiff's motion for summary disposition is GRANTED. The Court finds that defendant waived any right to retain the proceeds of decedent Edwin Sanger's life insurance policy pursuant to the judgment of divorce between defendant and decedent. The Court further finds that defendant's retention of the life insurance proceeds is a breach of the property settlement set forth in the judgment of divorce. The Court ORDERS that defendant turn over the proceeds of this insurance policy in the amount of $26,849.00 to plaintiff Joy Brown in her capacity as representative of decedent's estate. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* resolves the last pending claim and closes this case.

IT IS SO ORDERED.

MATTHEW S. SWITALSKI
Circuit Court Judge

Date: March 12, 2008

cc: Cheryl Cameron, 67 North Walnut,
Mt. Clemens, MI 48043
Nicole Winston, P.O. Box 611788,
Port Huron, MI 48061
Robert June, 124 Pearl Street, Suite 201,
Ypsilanti, MI 48197

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

JOY BROWN, Personal Representative of the ESTATE OF EDWIN E. SANGER, Deceased,

Plaintiff,

vs.

Case No. 2007-2448-CK

KATHLEEN R. WRIGHT, f/k/a KATHLEEN R. SANGER,

Defendant. /

OPINION AND ORDER

Defendant Kathleen Ruth Wright moves for reconsideration under MCR 2.119(F).

I. BACKGROUND

Plaintiff Joy Brown filed this action on June 11, 2007 asserting Edwin Eugene Sanger and defendant were married September 28, 1990. On October 21, 1990, Edwin Sanger designated defendant as the "beneficiary of his ERISA regulated General Motors Life and Disability Benefits Program". Edwin Sanger and defendant subsequently filed for divorce (*Sanger v Sanger*, Macomb County Circuit Court, Case No. 1992-3761-DO, Hon. George E. Montgomery). A *Judgment of Divorce* dated December 21, 1992

extinguished the rights of Edwin Sanger and defendant "in any policy or contract of life, endowment or any insurance of the other as beneficiary or otherwise".

Plaintiff avers Edwin Sanger failed to remove defendant as the beneficiary of his life insurance policy after the divorce. Edwin Sanger died on November 21, 2006. On April 2, 2007, Metropolitan Life Insurance Company declined to enforce defendant's waiver of her right to the life insurance proceeds because the decree did not contain language specifically referencing the particular life insurance plan. Notwithstanding, plaintiff contends the language in the *Judgment of Divorce* is enforceable against defendant.

Accordingly, plaintiff's complaint alleges: I. Declaratory relief and II. Breach of contract.

On July 12, 2007, defendant sought to remove this action to federal court. (*Brown v Sanger*, ED Mich, Case No. 2007-cv-12906, Hon. John Feikens). On September 19, 2007, the federal court concluded plaintiff's state law claims were not preempted by ERISA and remanded the matter. 511 F Supp 2d 850 (ED Mich, 2007).

On November 8, 2007, plaintiff moved for summary disposition under MCR 2.116(C)(8) and (10). Defendant responded on January 2, 2008 with a countermotion for summary disposition under MCR 2.116(I)(2). An *Opinion and Order* dated March 12, 2008 granted plaintiff's motion and, by implication,

denied defendant's countermotion for summary disposition.

Defendant now moves for reconsideration.

II. STANDARD OF REVIEW

A motion for rehearing under MCR 2.119(F) is not to be granted unless the motion is filed within fourteen days of the challenged decision. The moving party must demonstrate a palpable error by which the court and the parties have been misled, and show that a different disposition of the motion must result from correction of the error. A motion for rehearing or reconsideration that merely presents the same issue(s) ruled on by the court, either expressly or by reasonable implication, will not be granted. MCR 2.119(F)(3).

The purpose of MCR 2.119(F) is to allow a court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on appeal, but at a much greater expense to the parties. The time requirement for filing a motion is not jurisdictional, but insures the motion will be brought expeditiously. *Bers v Bers*, 161 Mich App 457, 462-463; 411 NW2d 732 (1987). The provisions of MCR 2.119(F) do not restrict the discretion of the judge to reconsider motions where the judge later determines the judge or a predecessor made a serious error, based on an intervening change in the law, or otherwise. *Brown v Northville Regional Psychiatric Hospital*, 153 Mich App 300, 309; 395

NW2d 18 (1986); *Michigan Bank-Midwest v DJ Reynaert, Inc*, 165 Mich App 630, 646; 419 NW2d 439 (1988).

III. ANALYSIS

As a preliminary matter, defendant's motion for reconsideration merely raises the same issues previously decided against her. Hence, further consideration is not warranted. Recall MCR 2.119(F)(3).

Notwithstanding, defendant's motion is essentially an invitation to overrule *Sweebe v Sweebe*, 474 Mich 151; 712 NW2d 708 (2006), and *Moore v Moore*, 266 Mich App 96; 700 NW2d 414 (2005). However, this Court is bound by the findings, conclusions and holdings of the appellate courts of this state. See, e.g., *Taines v Munson*, 42 Mich App 256; 201 NW2d 685 (1972).

Defendant's motion would also require vitiation of the law of the case and res judicata doctrines. However, defendant has not identified any material change in the facts or law that would allow the issue of ERISA preemption to be revisited. Compare *Bennett v Detroit Police Chief*, 274 Mich App 307, 311 n 1; 732 NW2d 164 (2007); see *Adair v State of Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004).

IV. CONCLUSION

For the reasons set forth above, defendant Kathleen Ruth Wright's motion for reconsideration is DENIED under MCR 2.119(F).

This *Opinion and Order* resolves the last pending claim in this matter and re-closes the case. MCR 2.602(A)(3).

IT IS SO ORDERED.

MATTHEW S. SWITALSKI
Circuit Court Judge

Date: April 25, 2008

cc: Cheryl Cameron, 57 N. Walnut, Mt. Clemens, MI 48043
Nicole Winston, 701 Huron Ave., P.O. Box 611788, Port Huron, MI 48061
Robert June, 124 Pearl Street, #201, Ypsilanti, MI 48197

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOY BROWN, Personal Representative of the ESTATE OF EDWIN E. SANGER, Deceased,

Plaintiff,

v.

KATHLEEN R. WRIGHT, f/k/a KATHLEEN R. [SANGER],

Defendant. /

Case No. 07-12906

Hon. John Feikens

OPINION AND ORDER

Plaintiff Joy Brown ("Brown") brought this lawsuit in Michigan Circuit Court for the County of Macomb. In her complaint, Brown alleges that when Defendant Kathleen Wright ("Wright") entered into a Judgment of Divorce (the "Divorce"), she waived the right to keep the proceeds of her ex-husband's life insurance policy. Brown seeks a declaration that Wright has waived her right to retain the policy proceeds and a judgment against Wright for [breach] of contract in the amount of the policy proceeds. Wright removed this action to federal court, contending that Brown's state law claims are preempted by the Employee Retirement Income Security Act ("ERISA"). Brown responded with the Motion to Remand this lawsuit to state court that is presently before me.

This Motion to Remand presents the question of whether Brown's state law causes of action challenging Wright's right to keep the proceeds of an ERISA regulated benefits program are preempted under ERISA. For the reasons set forth below, I find that Brown's state law causes of action are not preempted by ERISA and hereby GRANT her Motion to Remand.

Factual and Procedural Background

On September 28, 1990, Kathleen Wright married Edwin Eugene Sanger ("Sanger"). (Complaint ¶8.) Following their marriage, Sanger named Wright as the beneficiary of his General Motors Life and Disability Benefits Program. (*Id.* at ¶9.) In 1992, Sanger and Wright entered into a Judgment of Divorce. (*Id.* at ¶10.) The Divorce contained two clauses that are relevant to this matter.

> **Beneficiary Rights**
>
> IT IS FURTHER ORDERED AND ADJUDGED that any of the rights of either party in any policy or contract of life, endowment or any insurance of the other as beneficiary or otherwise, is hereby extinguished unless specifically preserved by this Judgment.
>
> **Pension**
>
> IT IS FURTHER ORDERED AND ADJUDGED that any rights of either party in any pension, annuity, or retirement plan

> benefit of the other, whether vested or unvested, accumulated or contingent are extinguished unless provided for elsewhere in this Judgment.

(*Id.* at Exhibit A.)

Despite the Divorce, Sanger never removed Wright as the beneficiary of his life insurance policy. (*Id.* at ¶12.) When Sanger died in November of 2006, Wright was still the named beneficiary of the policy. (*Id.* at ¶12-14.) Brown, the representative of the Estate of Edwin Sanger, filed a complaint in state court seeking a declaration that Wright "waived, pursuant to the Judgment of Divorce, any right to retain any insurance proceeds on the life of Edwin E. Sanger." (*Id.* at ¶16.) The complaint also contains a claim for breach of contact seeking judgment in the amount of the proceeds of the insurance policy. (*Id.* at ¶21.)

Wright removed this action to Federal Court claiming that Brown's state law causes of action are preempted by ERISA. Brown responded by bringing the present motion to remand the case to state court.

Applicable Law and Analysis

A defendant may remove a case from state to federal court if the case could have been brought in federal court in the first instance. 28 U.S.C. § 1441. Wright, who removed this case, claims that this action could have been brought in federal court because it presents a federal question pursuant to

28 U.S.C. § 1331. (Notice of Removal ¶5.) In determining whether a case presents a federal question, courts use the "well-pleaded complaint rule." *Metro. Life Ins. Co. v. Taylor,* 481 U.S. 58, 63, 107 S. Ct. 1542, 1546 (1987). For removal to be proper under the well-pleaded complaint rule, a federal question must appear on the face of the complaint. *Warner v. Ford Motor Co.,* 46 F.3d 531, 533 (6th Cir. 1995). A defendant can not render an action proper for removal by raising a federal defense. *Caterpillar, Inc. v. Williams,* 482 U.S. 386, 393, 107 S.Ct. 2425; 96 L.Ed. 2d 318 (1987).

There is an exception to the well-pleaded complaint rule when Congress so completely preempts a particular area "that any civil complaint raising this select group of claims is federal in character." *Taylor,* 481 U.S. at 63-64, 107 S. Ct. at 1546. If a plaintiff brings state law claims in an area that is completely preempted, those claims are recast as federal causes of action and the case can properly be removed. *Id.*

In passing ERISA, Congress expressed an intent to preempt "all state laws which 'relate to' an ERISA plan." *Central States, Se. & Sw. Areas Pension Fund v. Howell,* 227 F.3d 672 (6th Cir. 2000) (citing 29 U.S.C. § 1144(a)). A state law "relates to" an ERISA plan "if it has a connection with or reference to such a plan." *Shaw v. Delta Air Lines, Inc.,* 463 U.S. 85, 96-97, 103 S. Ct. 2890 (1983); *McMillan v. Parrott,* 913 F.2d 310, 311 (6th Cir. 1990). Thus, the issue at the heart of this motion is whether Brown's state law causes of action "relate to" an ERISA plan.

The Sixth Circuit has explained that there is no binding precedent on the issue of whether state law causes of action challenging a plan beneficiary's right to keep ERISA plan proceeds relate to the plan and are, thus, preempted.

> "It is clear that the law of this Circuit requires the ERISA plan administrator to pay out plan proceeds in accordance with the ERISA plan documents. However, there is no precedent binding on this Court on the issue of whether, once the beneficiary is determined, ERISA preempts all causes of action and possible remedies based upon state law that may be traced to the ERISA plan proceeds."

Central States, Se. & Sw. Areas Pension Fund v. Howell, 227 F.3d 672, 678 (6th Cir. 2000).

There is, however, instructive law on this topic. The Supreme Court has held that the proceeds of an ERISA employee welfare benefit plan can be subject to state garnishment proceedings. *See Mackey v. Lanier Collection Agency and Serv., Inc.,* 486 U.S. 825, 831-32, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988). And the Sixth Circuit has recently held that "once the [ERISA plan] benefits have been released to the properly designated beneficiary, the district court has the discretion to impose a constructive trust upon the those benefits in accordance with applicable state law." *Howell,* 227 F.3d at 679. Although neither of [these] cases directly address the specific issue presented here, in both instances the court found that

state law was not preempted from acting upon the proceeds of an ERISA benefits plan.

In a recent case, the Michigan Supreme Court provided a thorough analysis of whether state law claims can be used to challenge a plan beneficiary's right to keep the proceeds of an ERISA plan. Faced with facts that closely resemble those present in this matter, the Court held that "while a plan administrator is required by ERISA to distribute the proceeds from a plan to a named beneficiary, the named beneficiary can then be found to have waived the right to retain the distributed proceeds." *Sweebe v. Sweebe*, 474 Mich. 151, 160 (2006).

In addition, Judge Duggan, my colleague in the Eastern District of Michigan, recently analyzed this issue in a case with facts that mirror those present in this action. Judge Duggan concluded that "Plaintiffs attempt to recover the insurance proceeds from Defendant once those proceeds have been distributed by the plan administrator does not "relate to" the ERISA plan and the Court concludes that Plaintiffs claims are not preempted by state law." *Francis v. Donovan,* 2006 WL 481672, at *3 (E.D. Mich 2006).

Wright argues that Brown's state law causes of action should be preempted because the plan administrator has not yet distributed the plan proceeds and cites the Sixth Circuit's decisions in *Metro Life Ins. Co. v. Pressley* and *McMillan v. Parrott* in support of her position. *Metro. Life Ins. Co. v. Pressley,* 82 F.3d 126 (6th Cir. 1996); *McMillan v. Parrott,* 913 F.2d 310

(6th Cir. 1990). These cases, however, are clearly distinguishable from the present case. In both *Pressley* and *McMillan*, the issue was whether a broad waiver in a divorce decree could affect a beneficiary's right to receive the proceeds of a former spouse's ERISA benefits plan. *Pressley*, 82 F.3d at 130 ("In *McMillan*, this Court considered essentially the same question that it faces in this case: whether under the provisions of ERISA the former spouse of a decedent waives her interest as the designated beneficiary of the decedent by reason of a broad waiver of rights in the couple's divorce decree."). In both cases, the Sixth Circuit found that the former spouse, as the beneficiary of the plan, was entitled to receive the proceeds of the plan. *See Pressley*, 82 F.3d at 130; *McMillan*, 913 F.2d at 312.

This is not the issue presented here. Brown concedes that Wright is entitled to receive the proceeds of [Sanger's] life insurance policy under the terms of the plan. (Complaint ¶15.) The question presented here is whether Wright is entitled to keep those proceeds. I see a fundamental difference between state law causes of action that challenge a plan beneficiary's right to *receive* the proceeds of an ERISA plan and those that seek to challenge a plan beneficiary's right to *keep* the proceeds of an ERISA plan. Causes of action challenging a beneficiary's right to receive ERISA plan proceeds directly affect the administration of the ERISA plan. Because of this effect, these causes of action "relate to" the plan. Causes of action challenging a beneficiary's right to

keep ERISA plan proceeds do not interfere with the administration of the ERISA plan. They deal only with the rights of the plan beneficiary and, therefore, do not "relate to" the ERISA plan.

Conclusion

Because I find the opinions of the Supreme Court, the Sixth Circuit, the Michigan Supreme Court, and Judge Duggan persuasive on this issue, I hold that Brown's state law causes of action do not "relate to" an ERISA plan and, therefore, are not preempted by ERISA.

Accordingly, I GRANT Brown's Motion to Remand and ORDER this case remanded to Michigan Circuit Court for the County of Macomb.

IT IS SO ORDERED.

Date: September 19, 2007

s/ John Feikens
United States
District Judge

[Proof Of Service Omitted In Printing]

Order

June 23, 2010

139879

Michigan Supreme Court
Lansing Michigan

Marilyn Kelly,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

JOY BROWN, Personal Representative of the ESTATE OF EDWIN E. SANGER, Deceased,

Plaintiff-Appellee,

v

KATHLEEN R. WRIGHT, f/k/a KATHLEEN R. SANGER,

Defendant-Appellant.

SC: 139879
COA: 285509
Macomb CC: 2007-002448-CK

On order of the Court, the application for leave to appeal the September 15, 2009 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

HATHAWAY, J., would grant leave to appeal.

[SEAL] I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 23, 2010

/s/ Corbin R. Davis
Clerk

Joyce Nichols 11-16-90

Group National Accounts — Metropolitan Life Insurance Company

DESIGNATION OF BENEFICIARY
UNDER THE GENERAL MOTORS LIFE AND DISABILITY BENEFITS PROGRAM

Please read the step-by-step instructions BEFORE completing this form

A) Employees Name Edwin Sanger | Social Security No. _____

Address 35222 Davison (Number) (Street) | Plant Location Active 18001 [Illegible]

Sterling Heights, MI 48310 (City or Town) (State) (Zip Code) | (City and State)

For Salaried Employees Only Assignee or Applicant Owner (if any) _____

B) I hereby revise any previous designation(s) of beneficiary and contingent beneficiary (if any) and make the following designation in accordance with the Group Policies) checked below

For an Hourly Employee	For a Salaried Employee
Basic Life Insurance ..... ☒ Policy No. 15500 G	Basic Life Insurance ..... ☐ Policy No. 11000 G
Optional Life Insurance .... ☐ Policy No. 33500 G	Optional Life Insurance .... ☐ Policy No. 23600 G or 23601 G
	Supplemental Group Life Insurances ..... ☐ Policy No. 24390 G

C) Sections 1-3

1. For primary beneficiary designation

You MUST complete Section 1 Sections 2 and 3 contain additional options

I designate the following beneficiary(ies)

First Name, Middle Initial, Last Name	%	Relationship to Employee	Date of Birth	Address (Number, Street City State Zip Code)
Kathleen Ruth Sanger	100	Wife	8-xx-45	35222 Davison Sterling Heights, MI 48310

If more than one beneficiary is designated herein, then in the event that any of the said beneficiaries shall be not living at the employee's death, or, in the case of a "common disaster", designation, at the separation of the period specified in Section 3 below, the state of such beneficiary shall be paid to the beneficiaries who shall be living at the employee's death, in equal shares or all to the survivor

2. For contingent beneficiary designation

In the event said beneficiary(ies), Section 1 above, shall be not living at the employee's death or, in the case of a common disaster designation, at the expiration of the period specified in Section 3 below, I designate as contingent beneficiary(ies) the following

First Name, Middle Initial, Last Name	%	Relationship to Employee	Date of Birth	Address (Number, Street City State Zip Code)
Debra L. Sanger	100	Daughter	11-xx-62	P.O. Box 8130 Cape Canaveral, Florida 32920

If more than one contingent beneficiary is designated herein, then in the event that any of the said contingent beneficiaries shall be not living at the employee's death, or, in the case of a "common disaster", designation, at the expiration of the period specified in Section 3 below, the state of such contingent beneficiary shall be paid to the contingent beneficiaries who shall be living at the employee's death, in equal shares or all to the survivor

3. For "common disaster" designation

The amount payable by reason of the employee's death shall be paid to the primary beneficiary(ies), or contingent beneficiary(ies) as applicable, only if such beneficiary(ies), is (are) living at the expiration of 5 calendar days (maximum 30) following such death exclusive of the calendar day of such death

I reserve the right to change this designation at any time

D) Signature of Employee Applicant Owner or Assignee (IN INK)

/s/ Edwin E. Sanger Date 10-21-90

This designation of beneficiary has been made part of the employee's insurance records

By _____ Date _____

MetLife

Metropolitan Life Insurance Company

Group Life Claims
P.O. Box 3032
Utica, NY 13504

April 2, 2007

David A Sanger
36434 Samoa Drive
Sterling Heights, MI 48312

RE: Metropolitan Life Insurance Company
Insured: Edwin Sanger
Group No.: 15500
Claim No.: 20703000335

Dear Mr. Sanger:

We have evaluated your claim for Basic Life Insurance coverage. For the reasons detailed below, we must deny your claim.

The Plan is an employee welfare benefit plan regulated by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1001-1461. MetLife, as claims fiduciary, must administer claims in accordance with ERISA and the documents and instruments governing the Plan. ERISA defines beneficiary as a "person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." 29 U.S.C. § 1002(8).)

As you know, Edwin Sanger was enrolled for Basic Group Life coverage as a participant in the General

Motors Hourly Plan. Page 45, of the Summary Plan Description For General Motors Hourly Retirees and Eligible Survivors, Your Benefits in Retirement, dated December 2000, between General Motors and the UAW, states "Your basic life . . . insurance benefits are payable to your designated beneficiary(ies) in the event of your death." It also states, "Unless prohibited by divorce decree, you may name anyone you wish as your beneficiary(ies) for your life and personal accident insurance. You may change your beneficiary(ies) at any time using a designation form approved by the Corporation.

The last beneficiary designation in the insureds file is dated October 21, 1990 and names Kathleen R Sanger as the named beneficiary.

You are claiming that the designated beneficiary, Kathleen Sanger waived her rights to the group life benefits based upon the language in the Michigan divorce decree dated December 21, 1992 between Edwin Sanger and Kathleen Sanger. The controlling federal court has determined that in interest in the particular ERISA-regulated plan that is being waived.

Here, the divorce decree states: "IT IS FURTHER ORDERED AND ADJUDGED that any of the rights of either party in a policy or contract of life, endowment or any insurance of the other as beneficiary or otherwise, is hereby extinguished unless specifically preserved by this Judgement" Because this language does not specifically refer to the designated

beneficiary's rights as beneficiary under the employer's ERISA-regulated plan, there is no effective waiver.

Consequently, the benefit at issue is payable pursuant to the beneficiary designation provisions of the Plan and ERISA, and therefore, we must deny your claim.

Enclosed is a copy of the beneficiary designation that named Kathleen R Sanger as the named beneficiary that was signed by Edwin Sanger

Under ERISA, you have the right to appeal this decision **within sixty (60) days** after the receipt of this letter. To do so, you must follow the Collectively Bargained Appeal Process described in the Summary Plan Description, "What You Should Know About Your Benefits." [or "Your Benefits in Retirement."] Contact your local union benefit representative to assist you in the appeal steps **and notify MetLife at the above address or at 1-800-458-2479 that you have begun the appeal process**. If you are unsure as to how to contact a benefit representative, a local union office or GM location will be able to assist you. You should provide the reason(s) you believe the claim was improperly denied, and submit any additional comments, documents, records or other information that you deem appropriate for MetLife to give your appeal proper consideration. After this initial step, the appeal process would proceed as follows:

Step 1: Request a review of the denial by a MetLife Representative. **MetLife must hear from**

your union benefit representative within sixty (60) days after the receipt of this letter in order to preserve your appeal.

Step 2: You and/or your union benefit representative will discuss the denial with a MetLife representative. Upon request, MetLife will provide you with a copy of the records, documents and/or other information that would be relevant.

Step 3: If you still wish to proceed, the local union benefit representative will discuss the case with the designated Corporate management representative. If, after this discussion, the local union benefit representative still disagrees with the decision, he or she must request an appeal form from the designated Corporation management representative. The form must be completed and signed by both the union and Corporation management representative. Such form must then be provided to the International Union by the local union benefit representative.

Step 4: The International Union requests a review by the submission of the appeal form to the Corporation. The Corporation then requests MetLife to re-evaluate the case, after which a decision is sent to the Corporation.

Step 5: The International Union requests further review and consideration by submitting a written request to the Corporation. A face to face meeting is conducted between members

of MetLife, the International Union and the Corporation to discuss the case.

Step 6: Metlife will report to the International Union and to the Corporation its action as a result of the review

MetLife will carefully evaluate all the information and advise you of its decision within sixty (60) days after the receipt of your appeal. If there are special circumstances requiring additional time to complete the review, we may take up to an additional sixty (60) days, but only after notifying you of the special circumstances in writing. In the event your appeal is denied in whole or in part, you have the right to bring a civil action under Section 502(a) of ERISA.

If you have any questions, please contact our office at 800-458-2479, Team K.

Sincerely,

Group Life Claims Operations
Team K

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF MACOMB

JOY BROWN, Personal Representative of the ESTATE OF EDWIN E. SANGER, Deceased,

Plaintiff,

v

KATHLEEN R. WRIGHT, f/k/a KATHLEEN R. SANGER,

Defendant. /

HON: 07-244B-CK

CHERYL A. CAMERON (P52497)
D'LUGE, MILES, MILES & CAMERON, P.L.C.
Attorney for Plaintiff
67 N. Walnut
Mt. Clemens, MI 48043
(586) 468-7511 Fax: (586) 468-7049
ccameron@dmmplc.com /

COMPLAINT

NOW COMES Plaintiff, Joy Brown, Personal Representative of the Estate of Edwin E. Sanger, Deceased, by and through her attorneys, D'Luge, Miles, Miles & Cameron, P.L.C., stating as follows for her Complaint against Kathleen R. Wright, f/k/a Kathleen R. Sanger:

1. Joy Brown has been named Personal Representative of the Estate Edwin E. Sanger, Deceased,

Macomb County Probate Court Case No: 2007-190161-DE.

2. Kathleen R. Wright, f/k/a Kathleen R. Sanger, upon information and belief, is a resident of the City of Marysville, County of St. Clair, State of Michigan.

3. This cause of action arises out of a Judgment of Divorce entered by Judge Montgomery of the Macomb County Circuit Court on December 21, 1992.

4. This cause of action is to enforce a Judgment of Divorce entered on December 21, 1992.

5. This cause of action is also brought to declare the rights of the parties with respect to the Judgment of Divorce dated December 21, 1992.

6. The amount in controversy is in excess of $25,000.00 and otherwise within the jurisdiction of this Court.

COUNT I
DECLARATORY RELIEF

7. Plaintiff realleges and reincorporates all allegations as if fully set forth herein.

8. Edwin Eugene Sanger and Kathleen Ruth Sutton were married on September 28, 1990.

9. On October 21, 1990, Edwin Sanger designated Kathleen Ruth Sanger as his beneficiary of his

ERISA regulated General Motors Life and Disability Benefits Program.

10. On or about December 21, 1992, Edwin E. Sanger and Kathleen R. Wright, f/k/a Kathleen R. Sanger entered into a Judgment of Divorce before Judge Montgomery, bearing Case No: 92-3761-DO. (Exhibit A).

11. The Judgment provided under the section entitled Beneficiary Rights: It Is **Further Ordered and Adjudged** that any of the rights of either party in any policy or contract of life, endowment or any insurance of the other as beneficiary or otherwise is hereby extinguished unless specifically preserved by this Judgment.

12. Following the divorce, Edwin Sanger failed to remove Defendant as the beneficiary of his life insurance policy.

13. Mr. Sanger passed away on November 21, 2006.

14. On April 2, 2007, Metropolitan Life Insurance Company declined to enforce the Michigan divorce decree dated December 21, 1992 wherein Kathleen Sanger waived her rights to the group life benefits because the divorce decree did not contain language indicating that the beneficiary was waiving rights under the employer's ERISA-Regulated plan.

15. While the language is not adequate to waive rights to an ERISA regulated plan, the language

contained in the Judgment is enforceable against Defendant.

16. Pursuant to Michigan law, this Court may declare that Defendant has no right to retain insurance proceeds received from Metropolitan Life Insurance Company on behalf of its insured, Edwin Sanger.

WHEREFORE, Plaintiff requires that this Honorable Court declare that Defendant waived, pursuant to the Judgment of Divorce, any right to retain any insurance proceeds on the life of Edwin E. Sanger.

COUNT II
BREACH OF CONTRACT

17. Plaintiff realleges and reincorporates all allegations as if fully set forth herein.

18. The Judgment of Divorce dated December 21, 1992 is a contractual agreement between Kathleen R. Sanger and Edwin E. Sanger.

19. Pursuant to the Judgment of Divorce, Defendant waived any right to receive the proceeds from any policy or contract of life upon Edwin E. Sanger.

20. The proceeds from Metropolitan Life Insurance Company's life insurance policy on behalf of the life of Edwin Sanger have been waived by Defendant and thus are due and payable to the Estate of Edwin E. Sanger.

21. Failure to turn over the proceeds from the life insurance contract is a breach of the Judgment of Divorce.

WHEREFORE, the Estate of Edwin E. Sanger requests that this Honorable Court enter Judgment against Kathleen R. Wright, f/k/a Kathleen R. Sanger in the amount of the proceeds of the life insurance policy plus interest, costs and attorney fees so wrongfully incurred.

Respectfully submitted,

D'LUGE, MILES, MILES & CAMERON, P.L.C.

/s/ Cheryl A Cameron
By: Cheryl A. Cameron (P52497)
Attorney for Plaintiff
67 N. Walnut
Mt. Clemens, MI 48043
(586) 468-7511

Dated: June 7, 2007

Assignor: **Debra Sanger-Evans, 1620 Anchor Lane, Merritt Island, Florida 32952**

for good and valuable consideration paid by:

Assignee: **Joy Brown, Personal Representative of the Estate of Edwin E. Sanger, Deceased, Macomb County Case Number 2007-190161-DE**

the receipt and adequacy of which is acknowledged, Assignor assigns, sets over, transfers, and conveys to Grantee any and all interest that Grantor may have in and to the following:

> Right, title or interest as a contingent beneficiary in the proceeds of a life insurance policy on the life of Edwin E. Sanger. MetLife Claim No. 2070300335.

GRANTOR

Dated: 1-3-08 /s/ D Sanger-Evans
Debra Sanger-Evans

ACCEPTANCE

Purchaser accepts the assignment in accordance with its terms.

GRANTEE
Estate of Edwin E. Sanger, Deceased

Dated: 1-3-08 /s/ Joy Brown
Joy Brown
Personal Representative